

**REMARKS**

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1-7 and 9-58 are pending, with Claims 7, 9-11, 13, 14, 20-24, and 28-58 withdrawn from consideration.

**Amendment to the Claims**

Claims 1-6, 12, 15-19, and 25-27 have been examined, with no claims being allowed. Claims 1 and 25 have been amended.

Applicants have amended Claims 1 and 25 to clarify that the barrier layer is between at least two elastomeric filaments such that at least one of the elastomeric filaments is positioned adjacent each surface of the barrier layer, and that the elastomeric filaments adjacent the barrier layer may be either first or second filaments. Since Fig. 7 illustrates a barrier layer positioned between filaments in the low tension/high stretch zone, amended Claims 1 and 25 cover the species of Fig. 7. Support for this amendment is found in Fig. 7 and at page 25, lines 20-22; page 27, lines 10-12; and page 41, lines 7-10, of the specification.

In the Advisory Action mailed 17 September 2003, the Examiner states that "[t]he proposed amendment to claims 1 and 25 raises new issues because as claimed could encompass at a minimum an elastomeric first filament of the high tension zone on one side of a barrier layer and an elastomeric second filament of the low tension zone on the second side of the barrier layer which doesn't appear to be taught by the specification at the locations enumerated by Applicant." Applicants disagree with the Examiner's assessment of the teachings of the present application.

Fig. 7 illustrates a barrier layer positioned between filaments in the low tension and/or high stretch zone. At page 25, lines 20-22, the present application discloses that the barrier film may be present in both the low and high tension and/or stretch zones, or in just the low tension and/or high stretch zone. Since the first elastomeric filaments are present in the high-tension/low-stretch zone and the second elastomeric filaments are present in the low-tension/high-stretch zone, it follows that

if a first elastomeric filament is on one side of the barrier layer and a second elastomeric filament is on the opposite side of the barrier layer, the barrier layer must be present in both the low and high tension and/or stretch zones.

At page 27, lines 10-12, the present application reinforces the concept of positioning the barrier layer between filaments in the low tension and/or high stretch zone. At page 41, lines 7-10, the present application discloses the barrier layer positioned in the high tension and/or low stretch zone.

No new matter has been added by this Amendment. No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims also remains unchanged.

#### **Election/Restriction**

The Examiner indicates that Claims 7, 9-11, 13-14, 20-24, and 28-58 remain withdrawn from further consideration. Claims 9-11, 13-14, and 20-24 recite various types of garments and locations of where such garments may be worn. The elected species, i.e., Figure 7, does not illustrate a specific type of garment but instead illustrates a type of material that is generic to each of the embodiments recited in Claims 9-11, 13-14, and 20-24.

Therefore, Applicants respectfully believe the Examiner's withdrawal of Claims 7, 9-11, 13-14, and 20-24 was improper. Applicants hereby request reconsideration of Claims 7, 9-11, 13-14, and 20-24 as readable upon the elected species.

#### **Claim Rejections - 35 U.S.C. §102**

The rejection of Claims 1-5, 12, 15-19, and 25-26 under 35 U.S.C. §102(b) as being anticipated by 3M PCT Publication No. WO 95/34264 (hereinafter "PCT '264") is respectfully traversed.

PCT '264 discloses an elastic composite including one or two sheets thermally bonded directly to a multiplicity of molten, extruded elastic strands.

For a reference to anticipate a claim, the reference must disclose each and every element or limitation of the claim. PCT '264 does not disclose each and

every element or limitation of amended Claims 1 and 25. Applicants' invention as recited in independent Claims 1 and 25 requires a garment having high and low tension/stretch zones and a barrier layer positioned between at least two elastomeric filaments, such that at least one elastomeric filament is adjacent one surface of the barrier layer and at least one other elastomeric filament is adjacent the opposite surface of the barrier layer. PCT '264 fails to disclose elastomeric filaments positioned on opposite sides of a barrier layer.

For at least the reasons presented above, Applicants respectfully submit that amended Claims 1 and 25 are not anticipated by PCT '264. Because Claims 2-5, 12, and 15-19 depend from Claim 1, and Claim 26 depends from Claim 25, these claims are also not anticipated by PCT '264. Thus, Applicants respectfully request withdrawal of this rejection.

#### **Claim Rejections - 35 U.S.C. §103**

The rejection of Claims 6 and 27 under 35 U.S.C. §103(a) as being unpatentable over PCT '264 in view of European Patent Application No. 0 688 550, hereinafter "EP '550," is respectfully traversed.

EP '550 discloses a disposable absorbent garment having a continuous, selectively elasticized band joined about an opening, such as a waist opening. Even if a person skilled in the art were motivated to combine the teachings of EP '550 with the teachings of PCT '264, thereby applying a two-ply film rather than a one-ply film in PCT '264, the resulting garment would not overcome the deficiencies of PCT '264. More particularly, neither PCT '264, nor EP '550, nor the combination thereof, discloses or suggests a garment including high and low tension/stretch zones, and elastomeric filaments positioned on opposite sides of a barrier layer.

For at least the reasons given above, Applicants respectfully submit that the teachings of PCT '264 in view of EP '550 fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

**Conclusion**

Applicants believe that this case is now in condition for allowance. If the Examiner feels that any issues remain, then Applicants' undersigned attorney would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,



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Attachments